



Dave Yost • Auditor of State

OHIO AUDITOR OF STATE **KEITH FABER**



February 26, 2019

The attached audit report was completed and prepared for release prior to the commencement of my term of office on January 14, 2019. Reports completed prior to that date contain the signature of my predecessor.

A handwritten signature in cursive script that reads "Keith Faber".

Keith Faber
Auditor of State
Columbus, Ohio

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**XCEL HEALTHCARE PROVIDERS, INC.
CUYAHOGA COUNTY**

TABLE OF CONTENTS

Title	Page
Independent Auditor's Report	1
Compliance Examination Report	3
Recommendation: Provider Qualifications	8
Recommendation: Service Authorization.....	10
Recommendation: Service Documentation	11
Auditor of State Conclusion.....	12
Appendix I: Summary of Home Health Nursing Services Sample	13
Appendix II: Summary of Home Health Aide Services Sample	14
Appendix III: Summary of Personal Care Aide Services Sample	15
Appendix IV: Official Response.....	16

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Dave Yost • Auditor of State

INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE WITH REQUIREMENTS OF THE MEDICAID PROGRAM APPLICABLE TO HOME HEALTH AND WAIVER SERVICES

Ohio Department of Medicaid
50 West Town Street, Suite 400
Columbus, Ohio 43215

RE: Xcel Healthcare Providers, Inc.
Ohio Medicaid # 2469118

We were engaged to examine Xcel Healthcare Providers, Inc.'s (Xcel's) compliance with specified Medicaid requirements for provider qualifications, services authorization and service documentation related to the provision of home health nursing, home health aide, private duty nursing, and personal care aide services during the period of July 1, 2013 through June 30, 2016. Management of Xcel Healthcare Providers, Inc. is responsible for its compliance with the specified requirements.

Xcel entered into an agreement (the Provider Agreement) with the Ohio Department of Medicaid (ODM) to provide services to Medicaid recipients and to adhere to the terms of the agreement, state statutes and rules and federal statutes and rules, including the duty to maintain records supporting claims for payment made by Ohio Medicaid.

Our responsibility is to express an opinion on Xcel's compliance with the specified Medicaid requirements based on conducting the examination in accordance with attestation standards established by the American Institute of Certified Public Accountants. An examination involves performing procedures to obtain evidence about whether Xcel complied with the specified requirements. The nature, timing and extent of the procedures selected depend on our judgment, including an assessment of the risks of material noncompliance, whether due to fraud or error. Our examination does not provide a legal determination on Xcel's compliance with the specified requirements.

Internal Control Over Compliance

Xcel is responsible for establishing and maintaining effective internal control over compliance with the Medicaid requirements. We did not perform any test of the internal controls and we did not rely on the internal controls in determining our examination procedures. Accordingly, we do not express an opinion on the effectiveness of Xcel's internal control over compliance.

Basis for Disclaimer of Opinion

As described in the attached Compliance Examination Report, we found significant error rates in all of the exception tests and selected samples. The error rates in the exception tests ranged from 26 percent to 84 percent. The error rates in the three samples ranged from 60 to 70 percent. These errors included six percent of the selected services lacked documentation to support the Medicaid payment and 17 percent lacked the required authorization. As such we were unable to gain sufficient reliance on the available evidence to determine Xcel's compliance with the specified Medicaid requirements. Nor were we able to satisfy ourselves as to Xcel's compliance with these requirements by other examination procedures.

Basis for Disclaimer of Opinion (Continued)

In addition, the Provider declined to submit a signed representation letter acknowledging responsibility for maintaining records and complying with applicable laws and regulations regarding Ohio Medicaid reimbursement; establishing and maintaining effective internal control over compliance; making available all documentation related to compliance; and responding fully to our inquiries during the examination.

Disclaimer of Opinion

Because of the limitations on the scope of our examination discussed in the preceding paragraph, the scope of our work was not sufficient to enable us to express, and we do not express, an opinion on Xcel's compliance with the specified Medicaid requirements for the period of July 1, 2013 through June 30, 2016.

Our testing was limited to the specified Medicaid requirements detailed in the Compliance Examination Report. We did not test other requirements and, accordingly, we do not express an opinion on Xcel's compliance with other requirements either.

We calculated improper Medicaid payments in the amount of \$1,540,694.24. This amount, plus interest in the amount of \$187,120.48 totaling \$1,727,814.72 (calculated as of December 21, 2018) is due and payable to the ODM upon its adoption and adjudication of this examination report. Services billed to and paid by the ODM, which are not validated in the records, are subject to recoupment through the audit process. See Ohio Admin. Code § 5160-1-27 In addition, if fraud, waste or abuse¹ are suspected or apparent, the ODM and/or the office of the attorney general will take action to gain compliance and recoup inappropriate or excess payments in accordance with rule 5160-1-27 or 5160-26-06 of the Administrative Code.

This report is intended solely for the information and use of Xcel, the ODM and other regulatory and oversight bodies, and is not intended to be, and should not be used by anyone other than these specified parties.



Dave Yost
Auditor of State

December 21, 2018

¹ "Fraud" is an intentional deception, false statement, or misrepresentation made with the knowledge that the deception, false statement, or misrepresentation could result in some unauthorized benefit to oneself or another person. "Waste and abuse" are practices that are inconsistent with professional standards of care; medical necessity; or sound fiscal, business, or medical practices; and that constitute an overutilization of Medicaid covered services and result in an unnecessary cost to the Medicaid program. Ohio Admin. Code § 5160-1-29(A)

COMPLIANCE EXAMINATION REPORT

Background

Title XIX of the Social Security Act, known as Medicaid, provides federal cost-sharing for each State's Medicaid program. The rules and regulations that providers must follow are specified in the Ohio Administrative Code and the Ohio Revised Code. The fundamental concept underlying the Medicaid program is medical necessity of services: defined as services which are necessary for the prevention, diagnosis, evaluation or treatment of an adverse health condition. See Ohio Admin. Code § 5160-1-01(A) and (B)

Medicaid providers must "maintain all records necessary and in such form so as to fully disclose the extent of services provided and significant business transactions" for a period of six years from receipt of payment or until any audit initiated within the six year period is completed. Providers must furnish such records for audit and review purposes. Ohio Admin Code § 5160-1-17.2(D) and (E)

Ohio Medicaid recipients may be eligible to receive home health services, waiver services or both. Ohio Admin. Code § 5160-12-01(E) states the only provider of home health services is a Medicare certified home health agency (MCRHHA) that meets the requirements in accordance with Ohio Admin. Code § 5160-12-03. Waiver services can be provided by a MCRHHA, an otherwise-accredited home health agency or a non-agency nurse or personal care aide.

Xcel is a MCRHHA and during the examination period it received payments of \$2,948,029 for 54,061 services, including the following:

- 25,110 personal care aide services (procedure code T1019);
- 24,544 home health aide services (procedure code G0156);
- 2,691 home health nursing services (procedure code G0154);
- 938 private duty nursing services (procedure code T1000);
- 518 waiver nursing services (procedure codes T1002 and T1003);
- 116 physical therapy services (procedure code G0151);
- 96 nursing assessment/evaluation (procedure code T1001);
- 47 occupational therapy services (procedure code G0152); and
- 1 speech therapy service (procedure code G0153).

Xcel had two active Medicaid numbers during the examination period. In addition to the information listed above, Xcel received payments of over \$1 million under the number of 2326101 for preadmission screening system providing options and resources today (PASSPORT) waiver services and Department of Developmental Disabilities waiver services. This examination was limited to Medicaid number 2469118 and did not include any payments to the second Medicaid number.

Purpose, Scope, and Methodology

The purpose of this examination was to determine whether Medicaid payments to Xcel complied with Ohio Medicaid regulations. Please note that all rules and code sections relied upon in this report were those in effect during the examination period and may be different from those currently in effect. The scope of the engagement was limited to home health and waiver services that Xcel billed to Ohio Medicaid with dates of service between July 1, 2013 through June 30, 2016 and received payment.

Purpose, Scope, and Methodology (Continued)

While planning for this examination, we became aware of potential links between Xcel and five other home health agencies². We found a number of services billed by two or more of these six agencies to the same recipients. We then expanded the scope of the examination to include services to shared recipients.

We received Xcel's claims history from the Medicaid database and removed all services with a paid amount of zero. We then summarized services by recipient and identified recipients with high volume of services. We extracted 9,579 services for the five recipients with the highest number of services. We selected two dates for each of the five recipients. This resulted in 31 services which were tested as an exception test (Five Recipients Exception Test). The 31 selected services consisted of waiver nursing, nursing assessment, personal care aide, physical therapy, occupational therapy and home health aide services.

Using the remaining population (less extracted services), we combined with services paid to Horizon Health Services, LLC (Horizon) and identified services to the same recipient on the same date but paid to both agencies. We extracted from these shared recipient services the services paid to Xcel to review in their entirety (Shared Recipients with Horizon Exception Test). This exception test of 459 services consists of nursing assessment, skilled nursing, home health aide and personal care aide services.

We also combined the same remaining Xcel population with services paid to Generations Health Services, LLC (Generations) and identified services to the same recipient on the same date but paid to both agencies. We extracted all shared recipient services paid to Xcel to review in their entirety (Shared Recipients with Generations Exception Test). This exception test of eight services consists of home health nursing and aide services.

From the same remaining population, we extracted services rendered to a specific recipient for whom Horizon had also billed for home health services during the examination period but the dates of service did not match. We extracted all 71 services for this unique recipient paid to Xcel to review in their entirety (One Recipient Exception Test). This exception test consists of home health nursing and aide services.

With the remaining population (paid services less extracted services and excluded services (exception tests), we indexed the services by procedure code and extracted separate files of home health aide and personal care aide services. A separate extraction was done for home health, private duty and waiver nursing services. Each file was summarized by recipient date of services (RDOS). An RDOS is defined as all services for a given recipient on a specific date of service.

We used a stratified random sampling approach to facilitate a timely and efficient examination as permitted by Ohio Admin. Code § 5160-1-27(B)(1). Specifically, we stratified the personal care aide RDOS and the nursing RDOS into three strata using a modified cumulative frequency square root method (Dalenius-Hodge rule)³, the standard deviations and a 48 percent error rate for personal care aid services and a 50 percent error rate for nursing services. The calculated sample sizes are shown in **Table 1**.

² Imani Home Health Care, LLC, #2795202; Generations Health Services, LLC #0170657; Horizon Health Services, LLC #2533726; Four Seasons Health Services, LLC #0155958; and Essence Health Services, Inc. #0115238

³ Sampling of Populations-Methods and Applications, 3rd Ed. By Paul S. Levy and Stanley Lemeshow Wiley Series in Probability and Statistics, pp. 179-183

Purpose, Scope, and Methodology (Continued)

We stratified the home health aide RDOS into four strata and an estimate of the population overpayment standard deviation was made using the standard deviation of amounts overpaid with an average error rate of 48 percent. The estimated error rate per strata and standard deviation was done by using the U.S. Department of Health and Human Services/Office of Inspector General's (HHS/OIG) RATSTATS⁴ statistical program. This program was also used to calculate the sample sizes required. The calculated sample sizes are shown in **Table 1**.

Table 1		
Nursing Services (T1000, T1002, T1003 and G0154)	Population Size	Sample Size
RDOS Paid at \$74.99 and Below	2,421	135
RDOS Paid Between \$75 and \$174.99	556	83
RDOS Paid at \$175 and Over	517	125
Total:	3,494	343
Home Health Aide Services (G0156)	Population Size	Sample Size
RDOS Paid at \$24.99 and Below	1,347	30
RDOS Paid Between \$25 and \$49.99	19,292	350
RDOS Paid Between \$50 and \$74.99	1,687	58
RDOS Paid at \$75 and Over	141	30
Total:	22,467	468
Personal Care Aide Services (T1019)	Population Size	Sample Size
RDOS Paid at \$74.99 and Below	7,448	155
RDOS Paid Between \$75 and \$124.99	5,343	192
RDOS Paid at \$125 and Over	1,360	78
Total:	14,151	425

⁴ RAT-STATS is free statistical software package that providers can download to assist in a claims review. The package, created by OIG in the late 1970s, is also the primary statistical tool for OIG's Office of Audit Services.

Purpose, Scope, and Methodology (Continued)

We then obtained the detailed services for the sampled RDOS. A total of 1,989 services were selected for examination in the four exception tests and the three samples.

An engagement letter was sent to Xcel setting forth the purpose and scope of the examination. During the entrance conference, Xcel described its documentation practices and process for submitting billing to the Ohio Medicaid program. Xcel was afforded opportunities to submit additional documentation and we reviewed all documentation submitted for compliance.

Results

While certain services had more than one error, only one finding was made per service. The non-compliance and the basis for the findings are described in the Non-Compliance section below.

Five Recipients Exception Test

We tested 31 services for the five recipients with the most services and found that 10 percent of services had no documentation to support the payment and 28 percent of the personal care aide services were rendered by an aide that did not have the required first aid certification. In all we found that eight of the 31 services (26 percent) contained errors resulting in an improper payment of \$466.87.

Shared Recipients with Horizon Exception Test

We examined 459 services associated with four recipients that also received services from Horizon and found Xcel lacked service documentation for eight of these Medicaid payments. The claims data for these recipients show that one agency provided nursing and the other aide services (home health aide and personal care aide) although they varied in which agency provided which category of service. Both agencies billed for nursing assessment for one recipient on the same date which indicates possible overutilization of services. We identified an additional 389 errors in the exception test. We found that 387 of the 459 services (84 percent) contained errors, resulting in an improper payment of \$19,963.72.

Shared Recipients with Generations Exception Test

We examined eight services associated with two recipients for whom both Xcel and Generations received payment for home health services. The claims data shows that both agencies provided nursing and aide services. We found that Xcel lacked plans of care to authorize six of the services (75 percent) resulting in an improper payment of \$308.71.

One Recipient Exception Test

We tested 71 services associated with one recipient for whom both Xcel and Horizon billed for home health aide services. Xcel also billed for home health nursing services. We found that 41 services (58 percent) contained errors. We identified a total of 46 errors in the 71 services resulting in an improper payment of \$1,648.94.

Nursing Services Sample

We examined 351 nursing services (procedure codes G0154, T1000, T1002 and T1003) and found that 241 (69 percent) contained errors. We identified a total of 259 errors.

Nursing Services Sample (Continued)

The overpayments identified for 236 of 343 statistically sampled RDOS (241 of 351 services) from a stratified random sample were projected to Xcel's population of paid nursing services (less extracted and excluded services) resulting in a projected overpayment of \$205,107 with a 95 percent degree of certainty that the true population overpayment amount fell within the range of \$190,873 to \$219,342 (+/- 6.94 percent.) A detailed summary of our statistical sample and projection results is presented in **Appendix I.**

Home Health Aide Services

We examined 499 services (procedure code G0156) and found that 351 (70 percent) contained errors. We identified a total of 412 errors. The overpayments identified for 343 of 468 statistically sampled RDOS (251 of 499 services) from a stratified random sample were projected to Xcel's population of paid home health aide services (less extracted and excluded services) resulting in a projected overpayment of \$647,373 with a 95 percent degree of certainty that the true population overpayment amount fell within the range of \$611,808 to \$682,938 (+/- 5.49 percent.) A detailed summary of our statistical sample and projection results is presented in **Appendix II.**

Personal Care Aide Services Sample

We examined 570 services (procedure code T1019) and found that 341 (60 percent) contained errors. We identified a total of 344 errors. The overpayments identified for 268 of 425 statistically sampled RDOS (341 of 570 services) from a stratified random sample were projected to Xcel's population of paid personal care aide services (less extracted and excluded services) resulting in a projected overpayment of \$665,826 with a 95 percent degree of certainty that the true population overpayment amount fell within the range of \$613,437 to \$718,215 (+/- 7.87 percent.) A detailed summary of our statistical sample and projection results is presented in **Appendix III.**

A. Provider Qualifications

Nursing and Therapy Services

According to Ohio Admin. Code §§ 5160-12-01(G)(1) and 5160-12-02(A)⁵, home health nursing requires the skills of and is performed by either a registered nurse or a licensed practical nurse at the direction of a registered nurse.

Skilled therapy providers include, but are not limited to, licensed physical therapists, licensed occupational therapists, licensed physical therapy assistants under the direction of a physical therapist and licensed occupational therapy assistants under the direction of an occupational therapist who are contracted or employed by a MCRHHA. Ohio Admin. Code § 5160-12-01(G)(3)

We identified 11 registered nurses, six licensed practical nurses, one physical therapist, two physical therapy assistants and one occupational therapist that rendered services in the exception tests and samples. We verified via the Ohio e-License Center website that their professional licenses were current and valid on the first date of service identified and were active during the remainder of the examination period.

We found no instances of non-compliance with the professional licenses.

⁵ Per Section 323.10.70 of Am. Sub. H. B. 59 of the 130th General Assembly, the Legislative Services Commission renumbered the rules of the Office of Medical Assistance within the Department of Job and Family services to reflect its transfer to ODM. The renumbering became effective on October 1, 2013.

A. Provider Qualifications (Continued)

Home Health Aide Services

We did not examine provider qualifications for home health aides.

Personal Care Aide Services

In order to submit a claim for reimbursement, all individuals providing personal care aide services must obtain and maintain first aid certification from a class this is not solely internet-based and that includes hands-on training by a certified first aid instructor and a successful return demonstration of what was learned in the course. See Ohio Admin. Code §§ 5160-46-04(B)(6)(a)(ii), 5160-50-04(B)(6)(a)(ii) and 5123:2-9-56(C)(3)

We reviewed personnel records for the 110 personal care aides identified from the exception tests and statistical sample to determine if the aide had obtained and maintained the required first aide certification. We found that 45 of these aides lacked the certification and 26 aides had a lapse in certification for a span of time.

Five Recipients Exception Test

We examined 18 personal care aide services and found five services rendered by an aide who lacked first aid certification on the date of service. These five errors are included in the improper payment of \$466.87.

Shared Recipients with Horizon Exception Test

We examined 361 personal care aide services and found 353 services rendered by an aide who lacked first aid certification on the date of service. These 353 errors are included in the improper payment of \$19,963.72.

Personal Care Aide Services Sample

We examined 570 services and found 295 services rendered by an aide who lacked first aid certification on the date of service. These 295 errors are included in the projected improper payment of \$665,826.

Recommendation:

Xcel should review the Ohio Medicaid rules and improve its internal controls to ensure all personnel meet applicable requirements prior to rendering direct care services. Xcel should address the identified issues to ensure compliance with Medicaid rules and avoid future improper payments.

B. Authorization to Provide Services

Service Plans

According to Ohio Admin. Code § 5160-12-01(E)(3), home health services that are not identified on the all services plan are not reimbursable. In addition, providers of waiver services must render services in accordance with the recipients all services plan or individual service plan. See Ohio Admin. Code §§ 5160-45-10 and 5123:29-56(D).

Shared Recipients with Horizon Exception Test

We examined 361 personal care aide services and found no errors with service plans.

B. Authorization to Provide Services (Continued)

Plans of Care

All home health providers are required by Ohio Admin. Code § 5160-12-03(B) to create a plan of care including, but not limited to, the recipients' medical condition and treatment plans anticipated by provider. The plan of care is also required to be signed by the treating physician of recipient. Home health providers must obtain the completed, signed and dated plan of care prior to billing the ODM for the service.

We tested services in the following exception tests and samples for the requirement to have plans of care present, and that the plans of care authorized Xcel and the specific service rendered and were signed by the physician prior to Xcel submitting a claim for payment.

Shared Recipients with Horizon Exception Test

We examined a combination of 98 home health nursing and home health aide services and identified the following errors:

- 17 services (17 percent) lacked a plan of care authorizing the service;
- 7 services that were submitted for payment prior to the date the physician signed the plan of care;
- 5 services in which the plan of care did not authorize the service; and
- 2 services in which the plan of care was not signed by the physician.

These 31 errors are included in the improper payment amount of \$19,963.72.

Shared Recipients with Generations Exception Test

We examined eight services which included home health nursing and home health aide services and found six services (75 percent) lacked a plan of care authorizing the service. These six errors are included in the improper payment amount of \$308.71.

One Recipient Exception Test

We examined 71 services which included home health nursing and home health aide services and found 40 services that were submitted for payment prior to the date the physician signed the plan of care. These 40 errors are included in the improper payment of \$1,648.94.

Nursing Services Sample

We examined 351 services and identified the following errors:

- 111 services that were submitted for payment prior to the date the physician signed the plan of care;
- 108 services (31 percent) lacked a plan of care authorizing the service;
- 11 services in which the plan of care was not signed by the physician; and
- 2 services in which the plan of care did not include the frequency of services to be delivered.

These 232 errors are included in the projected improper payment amount of \$205,107.

B. Authorization to Provide Services (Continued)

Home Health Aide Sample

We examined 499 services and identified the following errors:

- 164 services that were submitted for payment prior to the date the physician signed the plan of care;
- 109 services (22 percent) lacked a plan of care authorizing the service;
- 34 services in which the plan of care was not signed by the physician; and
- 34 services in which the plan of care did not include the frequency of services to be delivered.

These 341 errors are included in the projected improper payment amount of \$647,373.

Recommendation:

Xcel should establish a system to ensure the signed plans of care are obtained prior to submitting claim for services to the ODM. Xcel should also review the plans of care to ensure they are signed and dated accordingly. Xcel should address the identified issues to ensure compliance with Medicaid rules and avoid future improper payments.

C. Service Documentation

The MCRHHA must maintain documentation of home health services provided that includes, but is not limited to, clinical and time keeping records that indicate the date and time span of the service and the type of service provided. See Ohio Admin. Code § 5160-12-03 Waiver service providers must maintain and retain all required documentation including, but not limited to, details of tasks performed or not performed, service start and end times and the dated signatures of the provider and the recipient or authorized representative. See Ohio Admin. Code §§ 5160-45-10 and 5123-2-9-56(E)(2)

We tested waiver services in the following exception tests and samples to determine if service documentation was maintained, contained the arrival and departure times of the practitioner rendering the service, contained a description of services rendered or included the tasks performed and that service documentation for waiver services included the dated signatures of the rendering provider and recipient or their authorized representative. For non-waiver home health services, we determined if service documentation was maintained, contained the arrival and departure times of the practitioner rendering the service and contained a description of services rendered.

Five Recipients Exception Test

Of the 31 selected services, we identified three services (10 percent) with no documentation to support the Medicaid payment. These three errors are included in the improper payment amount of \$466.87.

Shared Recipients with Horizon Exception Test

Of the 459 selected services, we identified eight services with no documentation to support the Medicaid payment. These eight errors are included in the improper payment amount of \$19,963.72.

In addition, we found five home health nursing services in which the documentation did not include the arrival and/or departure time. These services were provided on a date prior to July 1, 2015 when the definition of a base rate changed. In each of these instances Xcel was paid the base rate; therefore, no improper payment was associated with these errors.

C. Service Documentation (Continued)

Shared Recipients with Generations Exception Test

We found no errors.

One Recipient Exception Test

Of the selected 71 services, we identified six services (8 percent) with no documentation to support the Medicaid payment. These six errors are included in the improper payment amount of \$1,648.94.

Nursing Sample

We examined 351 services and found 20 services (6 percent) with no documentation to support the Medicaid payment and four services in which the number of units paid exceeded the documented duration. These 24 errors are included in the projected improper payment amount of \$205,107.

In addition, we found three services in which the documentation did not include the arrival and/or departure time. These services were provided on a date prior to July 1, 2015 when the definition of a base rate changed. In each of these instances Xcel was paid the base rate; therefore, no improper payment was associated with these errors.

Home Health Aide Sample

We examined 499 services and identified the following errors:

- 52 services (11 percent) with no documentation to support the Medicaid payment;
- 15 services in which the documentation supports one continuous visit but Xcel received payment for two visits; and
- 4 services in which the number of units paid exceeded the documented duration.

These 71 errors are included in the projected improper payment of \$647,373.

Personal Care Aide Sample

We examined 570 personal care aide services and identified the following errors:

- 33 services (6 percent) in which there was no documentation to support the Medicaid payment;
- 11 services in which the documentation supports one continuous visit but Xcel received payment for two visits;
- 2 services in which the number of units paid exceeded the documented duration;
- 2 services in which the aide did not sign the documentation; and
- 1 service in which the documented time overlapped the documented time for a previous service.

These 49 errors are included in the projected improper payment of \$665,826.

Recommendation:

Xcel should develop and implement procedures to ensure that all service documentation fully complies with requirements contained in Ohio Medicaid rules. In addition, Xcel should implement a quality review process to ensure that documentation is complete and accurate prior to submitting claims for reimbursement. Xcel should address the identified issues to ensure compliance with Medicaid rules and avoid future improper payments.

Xcel Healthcare Providers, Inc.
Independent Auditor's Report on
Compliance with Requirements of the Medicaid Program

Official Response

Xcel submitted an official response to the results of this examination which is presented in **Appendix IV**. Xcel disputes the methodology used and the results identified in the examination and indicates that detailed results were not shared by the Auditor of State. We did not examine Xcel's response and, accordingly, we express no opinion on it.

Auditor of State Conclusion

During the exit conference, we confirmed that documents detailing the specific non-compliance for every instance described in this report had been sent to Xcel prior to receipt of this official response. Also during the exit conference, we informed Xcel that the work papers developed for this examination are not available as a public record until this report is officially released by the Auditor of State. While the response states it is an "initial response", we were subsequently informed that it was to be considered the final response to the examination.

APPENDIX I

Summary of Nursing Services Sample

POPULATION

The population is all paid Medicaid services with dates of services during the examination period, less certain excluded services, and net of any adjustments.

SAMPLING FRAME

The sampling frame for this sample is paid and processed claims from the Medicaid Information Technology System (MITS).

SAMPLE UNIT

The primary sampling unit was an RDOS.

SAMPLE DESIGN

We used a stratified random sample.

Description	Results
Number of Population RDOS	3,494
Number of Population RDOS Sampled	343
Number of Population RDOS Sampled with Errors	236
Number of Population Services Provided	3,541
Number of Population Services Sampled	351
Number of Population Services Sampled with Errors	241
Total Medicaid Amount Paid for Population	\$302,070.08
Amount Paid for Population Services Sampled	\$44,420.22
Projected Population Overpayment Amount	\$205,107
Upper Limit Overpayment Estimate at 95% Confidence Level	\$219,342
Lower Limit Overpayment Estimate at 95% Confidence Level	\$190,873
Precision of Population Overpayment Projection at the 95% Confidence Level	\$14,234 (+/-6.94%)

Source: Analysis of MITS information and Xcel's records

APPENDIX II

Summary of Home Health Aide Services Sample

POPULATION

The population is all paid Medicaid services with dates of services during the examination period, less certain excluded services, and net of any adjustments.

SAMPLING FRAME

The sampling frame for this sample is paid and processed claims from MITS.

SAMPLE UNIT

The primary sampling unit was an RDOS.

SAMPLE DESIGN

We used a stratified random sample.

Description	Results
Number of Population RDOS	22,467
Number of Population RDOS Sampled	468
Number of Population RDOS Sampled with Errors	343
Number of Population Services Provided	22,660
Number of Population Services Sampled	499
Number of Population Services Sampled with Errors	351
Total Medicaid Amount Paid for Population	\$877,800.97
Amount Paid for Population Services Sampled	\$21,051.08
Projected Population Overpayment Amount	\$647,373
Upper Limit Overpayment Estimate at 95% Confidence Level	\$682,938
Lower Limit Overpayment Estimate at 95% Confidence Level	\$611,808
Precision of Population Overpayment Projection at the 95% Confidence Level	\$35,565 (+/-5.49)

Source: Analysis of MITS information and Xcel's records

APPENDIX III

Summary of Personal Care Aide Services Sample

POPULATION

The population is all paid Medicaid services with dates of services during the examination period, less certain excluded services, and net of any adjustments.

SAMPLING FRAME

The sampling frame for this sample is paid and processed claims from MITS.

SAMPLE UNIT

The primary sampling unit was an RDOS.

SAMPLE DESIGN

We used a stratified random sample.

Description	Results
Number of Population RDOS	14,151
Number of Population RDOS Sampled	425
Number of Population RDOS Sampled with Errors	268
Number of Population Services Provided	17,517
Number of Population Services Sampled	570
Number of Population Services Sampled with Errors	341
Total Medicaid Amount Paid for Population	\$1,149,730.27
Amount Paid for Population Services Sampled	\$40536.31
Projected Population Overpayment Amount	\$665,826
Upper Limit Overpayment Estimate at 95% Confidence Level	\$718,215
Lower Limit Overpayment Estimate at 95% Confidence Level	\$613,437
Precision of Population Overpayment Projection at the 95% Confidence Level	\$52,389 (+/-7.87%)

Source: Analysis of MITS information and Xcel's records

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Richard D. Panza

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January 22, 2019

Auditor of the State of Ohio
 Attn: Cherie Coutts, Senior Audit Manager
 Medicaid/Contract Audit Section
 88 East Broad St., Ninth Floor
 Columbus, Ohio 43215
 Via electronic mail (crcouts@ohioauditor.gov) and ordinary U.S. Mail

RE: Xcel Healthcare Providers, Inc. response to Draft Compliance Examination dated January 3, 2019

Dear Ms. Coutts:

Please accept this letter as the initial response of Xcel Healthcare Providers, Inc. ("Xcel") to the State Auditor Draft Compliance Examination dated January 3, 2019 (the "Report"). This letter shall serve only as Xcel's initial response to the Report, and in no way shall constitute a response to a formal notification of overpayment, as outlined under *Ohio Administrative Code ("O.A.C.")* §5160-71-02(A).

Please be advised the law firm of Wickens Herzer Panza has been retained to represent the interests of Xcel in this matter. We ask that all future correspondence or verbal communication be directed to our office and that there be no direct contact with our client in this matter. Furthermore, to the extent this matter proceeds to a hearing under *O.A.C.* §5160-71-07, please be advised I, the undersigned, will serve as "trial counsel" as required by *O.A.C.* §5160-71-07(D).

Based on our examination of the Report and the limited information it provides, it appears you allege Xcel did not adhere to certain Medicaid requirements, resulting in \$1,540,694 (plus interest) in improper reimbursement payments, pursuant to *O.A.C.* §5160-1-27. Specifically, it appears all but \$21,921.33 you allege Xcel was overpaid, is due to: (1) home care nursing services being performed by health care providers who did not meet Medicaid's qualification requirements; (2) improper authorization to provide services due to failure to identify services on required plans; and (3) failure to maintain proper clinical and time keeping records.

The Report is vague in its allegations, and, further, relies on statistical sampling techniques to extrapolate Xcel's alleged overpayment, stating that due to statistical uncertainties, the overpayment amount could be anywhere from \$1,490,895.15 to \$1,695,272.20. While Xcel understands this use of statistical sampling is currently permitted under *O.A.C.* §5160-1-27(B)(1), Xcel refuses to accept such an extrapolation as valid. Xcel asserts this practice of demanding payment based upon an extrapolation of statistical sampling is a deprivation of Xcel's property, and therefore, a violation of Xcel's rights to due process as afforded under the Constitution. Xcel has been a long-standing and respected member of the health care community, and has always complied with applicable law. Xcel has always cooperated with every requirement imposed by a governing agency in an effort to afford its clients the best possible service. Xcel fully denies any and all allegation of non-compliance.

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Usually, it would be the practice of Xcel to refute each and every allegation on a specific and individual basis. Unfortunately, the Report provides no actual specificity relating to any individual service or alleged violation. However, to the extent alleged, Xcel fully denies each and every allegation of non-compliance. Xcel has fully complied with every requirement related to appropriate licensure of healthcare aides, as required in *O.A.C.* §§5160-12-01(G)(1) and 5160-12-02(A)(5), and all required first-aid certification of any and all healthcare aides, as required by *O.A.C.* §§5160-46-04(B), 5160-50-04(B), and 5123:29-56(c). Further, Xcel has always appropriately and fully complied with any and all authorization of care requirements, including but not limited to, *O.A.C.* §§5160-45-10 and 5123-29-56(D). Xcel's compliance includes correct authorization of approved care plans, as required in *O.A.C.* §5160-12-03(B). Lastly, Xcel has completely adhered to any and all requirements for provider service documentation, including but not limited to, *O.A.C.* §§5160-12-03, 5160-45-10, 5123:2-9-56(E).

In order to fully and appropriately respond to the allegations, Xcel requires the ability to examine the complete audit. Specifically, we request your office provide us with the complete, detailed audit, including the analysis of each and every service alleged to have resulted in overpayment. We formally request the audit, as permitted as a public record for inspection and copying, pursuant to *Ohio Revised Code*, §149.43(A)(1), (B)(1). Xcel has fully complied with all Medicaid requirements for authorization of services, provider qualification, and service documentation and is eager to defend any allegation alleging the opposite. While Xcel understands a formal appellate process is outlined in *O.A.C.* §§5160-71-02 to 5160-71-07, specifically the procedures for discovery in §5160-71-06(A), it would like to refute the Report now to prevent the necessitation of such proceedings.

At the current time, Xcel is unable to fully, appropriately and lawfully respond to the Report. Due to the foregoing reasons, three weeks is simply not enough time to complete a reasonable and appropriate response. Xcel understands this is not the Auditor Office's notification for overpayment as required in *O.A.C.* §5160-71-02(A), but wishes to fully defend these allegations to negate reasoning for any further action. It should be clear once Xcel has been able to fully respond, Xcel fully anticipates your office ceases recoupment of the alleged overpayments.

Xcel has complied with every step of the audit and will continue to do so, to the extent required under *O.A.C.* §5160-1-27. However, Xcel will not agree to repay costs for non-compliance when Xcel fully complied with applicable legal requirements. This includes, but is not limited to, the purpose of Medicaid – to provide services which are necessary for the prevention, diagnosis, evaluation, or treatment of a health condition. *See O.A.C.* §5160-1-01(A)-(B).

We look forward to receiving the complete and detailed audit report. Further, we welcome any other information your office wishes to provide us in an effort to allow Xcel to make an appropriate response.

Sincerely,

WICKENS HERZER PANZA



By: Richard D. Panza
Attorney at Law

OHIO AUDITOR OF STATE KEITH FABER



XCEL HEALTHCARE PROVIDERS INC

CUYAHOGA COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
FEBRUARY 26, 2019**